

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 1376 of 1988

DOROTHY WANJIKU GUCHU & ANOTHER.....PLAINTIFFS

VERSUS

DR. SAMUEL MUNDATI GATABAKI.....DEFENDANT

RULING

By this Notice of Motion expressed to be brought under Order L Rule 1 of the Civil Procedure Rules and Sections 98 and 3A of the Civil Procedure Act the plaintiff seeks orders that a Deputy Registrar or any other competent Officer of this Honourable Court be appointed and authorized to execute all the necessary application for consent, Mutation Forms, Transfers, Conveyances, and/ or any other necessary documents on behalf of the Defendant in order to give effect to the judgment and Decree given by this Honourable Court on 12th November 1996, that the Defendant do refund to the plaintiffs any costs incurred in pursuit of the said transfer as well as the costs of this application. The application is based on the ground that the Defendant has refused, failed and/or neglected to co-operate with the plaintiff in completing the subdivision of the suit property and in signing all such documents as are necessary for the transfer to the plaintiff of the portion due to the plaintiff under the decree aforesaid. The application is supported by sworn affidavit of the DOROTHY WANJIKU GUCHU and SIMMONE B.M. WAMBUGU sworn on 14th June 2005 in which it is averred that this suit was filed against the Defendant on 31st March 1988, seeking orders for specific performance regarding the sale and transfer of LR NO.5980 Ridge Ways Nairobi, damages and costs, that judgment dated 12th November 1996 was entered in favour of the plaintiff on specific performance on the part of defendant ordering the said Defendant to effect transfer of 5 acres of the said property at his own costs within 14th days and further condemning the defendant to pay costs of the suit to the plaintiff, that a decree has since been extracted pursuant to the judgment of the court and effected service of the same upon the defendant together with a Penal Notice, that despite the Notice given to the defendant at service, the defendant has not in any way whatsoever taken initiatives to effect the said transfer and that since then the Defendant has refused, failed and/or neglected to execute to effect the transfer and it is therefore necessary for the court to appoint an officer to execute any necessary documents on behalf of the Defendant to enable the transfer in accordance with the Decree of this court.

The defendant was served with this application but did not attend to defend the same and it therefore proceeded ex parte. Having considered the application as well as the affidavits in support and the submissions by counsel, I am satisfied that this application has merit and should be allowed. The application is granted in terms of prayers 1, and 3 of the Notice of Motion dated 14th June 2005.

Dated and delivered at Nairobi this 22nd day of March 2006.

J.L.A. OSIEMO

JUDGE